

### § 90-325.1. Definitions.

The following definitions apply in this Article, unless the context requires otherwise:

- (1) Eligible patient. – An individual who meets all of the following criteria:
  - a. Has a terminal illness, attested to by a treating physician.
  - b. Has, in consultation with a treating physician, considered all other treatment options currently approved by the United States Food and Drug Administration.
  - c. Has received a recommendation from the treating physician for use of an investigational drug, biological product, or device for treatment of the terminal illness.
  - d. Has given informed consent in writing to use of the investigational drug, biological product, or device for treatment of the terminal illness or, if the individual is a minor or is otherwise incapable of providing informed consent, the parent or legal guardian has given informed consent in writing to use of the investigational drug, biological product, or device.
  - e. Has documentation from the treating physician that the individual meets all of the criteria for this definition. This documentation shall include an attestation from the treating physician that the treating physician was consulted in the creation of the written, informed consent required under this Article.
- (2) Investigational drug, biological product, or device. – A drug, biological product, or device that has successfully completed Phase I of a clinical trial but has not yet been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration.
- (3) Terminal illness. – A progressive disease or medical or surgical condition that (i) entails significant functional impairment, (ii) is not considered by a treating physician to be reversible even with administration of available treatments approved by the United States Food and Drug Administration, and (iii) will soon result in death without life-sustaining procedures.
- (4) Written, informed consent. – A written document that is signed by an eligible patient; or if the patient is a minor, by a parent or legal guardian; or if the patient is incapacitated, by a designated health care agent pursuant to a health care power of attorney, that at a minimum includes all of the following:
  - a. An explanation of the currently approved products and treatments for the eligible patient's terminal illness.
  - b. An attestation that the eligible patient concurs with the treating physician in believing that all currently approved treatments are unlikely to prolong the eligible patient's life.
  - c. Clear identification of the specific investigational drug, biological product, or device proposed for treatment of the eligible patient's terminal illness.
  - d. A description of the potentially best and worst outcomes resulting from use of the investigational drug, biological product, or device to treat the eligible patient's terminal illness, along with a realistic description of the most likely outcome. The description shall be based on the treating physician's knowledge of the proposed treatment in conjunction with an awareness of the eligible patient's

terminal illness and shall include a statement acknowledging that new, unanticipated, different, or worse symptoms might result from, and that death could be hastened by, the proposed treatment.

- e. A statement that eligibility for hospice care may be withdrawn if the eligible patient begins treatment of the terminal illness with an investigational drug, biological product, or device and that hospice care may be reinstated if such treatment ends and the eligible patient meets hospice eligibility requirements.
- f. A statement that the eligible patient's health benefit plan or third-party administrator and provider are not obligated to pay for any care or treatments consequent to the use of the investigational drug, biological product, or device, unless specifically required to do so by law or contract.
- g. A statement that the eligible patient understands that he or she is liable for all expenses consequent to the use of the investigational drug, biological product, or device and that this liability extends to the eligible patient's estate, unless a contract between the patient and the manufacturer of the drug, biological product, or device states otherwise.
- h. A statement that the eligible patient or, for an eligible patient who is a minor or lacks capacity to provide informed consent, that the parent or legal guardian consents to the use of the investigational drug, biological product, or device for treatment of the terminal condition.  
(2015-137, s. 1.)